

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 674 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KAMRUDDIN @ KAMRUDADA

BHURABHAI GANCHI

Versus

DEPUTY COMMISSIONER OF POLICE

Appearance:

MR BC DAVE for Petitioner

NOTICE SERVED for Respondent No. 1

Mr S J Dave, APP for Respondent No. 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 17/08/98

ORAL JUDGEMENT

By way of this Special Criminal Application under Article 227 of the Constitution of India, the petitioner seeks direction to quash the order of the Appellate Authority under section 60 of the Bombay Police Act, 1951 imposing a condition of furnishing a bond of Rs.30,000/- for maintaining a good behaviour for two years commencing

from 1.5.1997.

2. The Asstt. Commissioner 'B' Division, Ahmedabad issued show cause notice to the petitioner as to why he should not be externed for a period of two years from the jurisdiction of the Police Commissioner of Ahmedabad City and the contingency districts of Ahmedabad (Rural), Gandhinagar, Kheda and Mehsana. The petitioner filed reply. By order dated 27.3.1997, the order of externment was passed in terms of the show cause notice and the petitioner preferred an appeal to the Government under the provisions of Section 60(3) of the Bombay Police Act. Dy.Secretary, by order dated 1.5.1997 set aside the order. He however, directed the petitioner to furnish surety of Rs.30,000/- for maintaining good behaviour for a period of two years commencing from 1.5.1997.

3. The petitioner challenges the said order. It is contended that once the order of externment has been quashed, the appellate authority has no jurisdiction to ask the petitioner to furnish bond of surety for maintaining good behaviour. Learned Advocate in support of his contentions, has relied upon a Division Bench Bench judgment, in the case of Abbas Hussain Fateh Mahammed vs. Deputy Commissioner of Police, Surat & Ors., reported in 1987 (1) GLH 222.

4. I have gone through the said judgment. In the said case, the Dy.Secretary, on hearing the appeal under section 60(3) directed the petitioner to execute bond for good character in the sum of Rs.5000/-. The Court also found that the authorities have taken seven months and seventeen days subsequent to the argument to pass an order of externment. In view of this, the order of externment was quashed. The Court also considered that once the order of externment is found to be bad in law, no order directing to keep peace in the locality under the provisions of Section 56 of the Bombay Police Act can be passed. The Court observed thus :

"No doubt in this case the appellate authority has directed only the execution of the bond. Even this is to keep peace in that locality as a preventive measure and this is available to the authorities concerned as per section 56 of the Bombay Police Act. It can either remove the person concerned outside the area or direct that person to conduct himself as shall seem necessary in order to prevent violence and alarm. If such a delay is fatal for the externment order, such delay is fatal also to an order for getting a

bond as provided under Section 56 of the Act."

5. In view of the aforesaid, this Special Civil Application is allowed and the impugned order dated 1.5.1997 passed by the respondent No.2 is quashed and set aside so far as it relates to directing the petitioner to furnish bond for a sum of Rs.30,000/- for maintaining good behaviour for a period of two years commencing from 1.5.1997. Rule made absolute.

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msp.